

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MARTY KEITH MATHIS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

) 5:11 CR39
)
)
) 1:14CV1044
) 1:99CR371-1
)
)

FILED
STATESVILLE, N.C.
JUL 6 2015
U.S. District Court
Western District of N.C.

ORDER AND JUDGMENT

BEATY, District Judge.

On May 26, 2015, the United States Magistrate Judge's Order and Recommendation [Doc. #39] was filed and notice was served on the parties pursuant to 28 U.S.C. § 636(b). In the Order and Recommendation, the Magistrate Judge recommended that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 [Doc. #26] and Corrected Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 [Doc. #28] be granted, in light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011). Accordingly, the Magistrate Judge also recommended that the Judgment [Doc. #16] be vacated, that the Indictment [Doc. #1] be dismissed, and that any money paid by Petitioner toward the \$100.00 special assessment be returned or credited to Petitioner. Additionally, the Magistrate Judge ordered that Petitioner's pending Application to Proceed *In Forma Pauperis* [Doc. #29] and Motion for Appointment of Counsel [Doc. #30] be denied, as there is no filing fee associated with Motions under § 2255 and counsel had previously been appointed to Petitioner. Furthermore, the Magistrate Judge ordered that, in light of the transfer of jurisdiction to the Western District of North Carolina for purposes of Defendant's supervised release, the Clerk's Office shall provide notice of this Order and Judgment to the United States District Court for

the Western District of North Carolina. No objections were filed within the time limits prescribed by § 636.

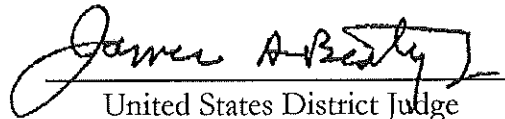
In the absence of objections, this Court reviews the Order and Recommendation only for clear error. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Fed. R. Civ. P. 72 advisory committee's note. The Court has appropriately reviewed the Order and Recommendation. Having done so, the Court finds that no clear error exists and the Order and Recommendation should be adopted. The Magistrate Judge's Order and Recommendation [Doc. #39] is therefore affirmed and adopted for the reasons set forth therein.

IT IS THEREFORE ORDERED AND ADJUDGED that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 [Doc. #26] and Corrected Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 [Doc. #28] are GRANTED, that the Judgment [Doc. #16] is VACATED, that the Indictment [Doc. #1] is DISMISSED, and that any money paid by Petitioner toward the \$100.00 special assessment be RETURNED or CREDITED to Petitioner.

IT IS FURTHER ORDERED that Petitioner's Application to Proceed *In Forma Pauperis* [Doc. #29] and Motion for Appointment of Counsel [Doc. #30] are DENIED.

IT IS FURTHER ORDERED the Clerk's Office shall provide notice of this Order and Judgment to the United States District Court for the Western District of North Carolina.

This, the 30th day of June, 2015.


United States District Judge

ECF DOCUMENT

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the Western District of North Carolina.

Date Filed: 6.30.2015

JOHN S. BRUBAKER, Clerk

By: , Deputy Clerk